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1952.

File No. O. Police 52 pt 1

Legal Department
A **BRANCH**

Subject:— Opinions under the Bombay Police Act, 1951.

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EKN.6/8/

OFFICE OF THE R.LA

The Home Department view that the order of exterment made under section 46(3) of the Bombay District Police Act, 1890, is an executive order and can be cancelled by the authority making it is correct (see Emperor vs. Abdul Rehman 52 Bom. L.R. 558 and section 21 of the Bombay General Clauses Act,1904). The cancellation will will now have to be under the provisions of the Bombay Police, Act, 1951 (Bombay Act XXII of 1951), in which section 56 corresponds to section 46(3) of the Bombay District Police Act, 1890.

Sd/ P. M. Lad.

Remembrancer of Legal Affairs.

U.R. to H.D.No.216 dated the 9th January 1952.

EKN.4/8/

LEGAL DEPARTMENT.

The transfer of a Deputy Superintendent of Police from the mofussil as Superintendent of Police in Greater Bombay and vice-versa would be neither a promotion nor a demotion. Consequently the argument advanced in the P. & S.D. office note is not correct..

Sd/ J.R.D.

Additional Secretary to Government.

U.R. to H.D. Through P. & S.D. 43-Confl, dated the 10th January 1952.

EKN.4/8/

Legal Department.

2196/31-1-52.

Submitted with reference to Secretary, H.D's note at p. 4 ante. It appears that the Government of India, Ministry of Food and Agriculture is exhibiting documentary films in the International Industries Fair. The Commissioner of Police has informed the Officer on Exhibition Duty that it would be necessary for him to obtain a licence under the rules for licensing and controlling theatres etc. The H.D. have stated in their office note that a premises licence under rule 238 of the rules will be necessary. The question raised for the consideration of the R.L.A. is whether the Rules in question are applicable to Government.

Sd/

Remembrancer of Legal Affairs.

EKN.4/8/

Office of the R.L.A.

The provision of the statute, viz. section 22 of the City of Bombay Police Act,1902, under which Rule 238 is made does not bind Government by express mention or by necessary implication. Nor can it be affirmed that when it was passed it was apparent from its terms that its beneficient purpose must be wholly furstrated unless Government were bound, so that it could be inferred that Government has so agreed to be bound. In these circumstances it would be proper to hold that the Rule in question would not apply to the exhibition of documentary films by the Government of India for purely Government purposes.

Sd/ P.M. Lad.

Remembrancer of Legal Affairs.

U.R. to H.D.No.1843,dated the 5th February 1952.

EKN.4/8/

Office of the R.L.A.

The relevant facts are these. One Shri K.S. Chavan, a Sub-Inspector of Police, was tried departmentally for accepting a bribe of Rs.500/- He was dismissed first with effect from 23rd April 1949, but it was found that the departmental proceedings were defective. A fresh departmental proceeding was, therefore, held and he was again dismissed with effect from 27th January 1951 by an order of the Deputy Commissioner of Police, Crime Branch II (C.I.D). The Sub-Inspector appealed against the order and the said appeal was referred by the Commissioner to an Appellate Board consisting of two Assistant Commissioners of Police who rejected the appeal and upheld the dismissal order. It is now contended by the Sub-Inspector that the Board consisting of Assistant Commissioners had no authority to decide his appeal as the Rule requires appointment of Deputy Commissioners. The Commissioner of Police states that under section 6(2) of the Bombay City Police Act all the powers and duties of the Commissioner of Police ~~xxxx

confirm this view.

2. Rule 8 of the Rules under section 7(2) of the City of Bombay Police Act,1902, provides that when the officer punished is of or below the rank of Inspector and the order of punishment has been passed by the Deputy Commissioner of Police specially empowered by the Commissioner of Police in that behalf, an appeal against such order shall lie to a Board of Appeal consisting of two other Deputy Commissioners of Police to be appointed by the Commissioner for the purpose. On a strict consturction, the provisions of the Rule appear to exclude appointment of Assistant Commissioners on the Board. It is true that ~~thm~~ under section 6(2) of the City of Bombay Police Act,1902 the Assistant Commissioner is empowered to exercise such powers and perform such duties as may form time to time be delegated or assigned to him by the Commissioner, but these provisions do not appear to empower the Commissioner to delegate to the Assistant Commissioner powers which are specially conferred on the Deputy Commissioner by statutory Rules. In the circumstances the view taken by the Inspector General of Police and the Home Department appears correct.

Sd/ P.M. Lad.

Remembrancer of Legal Affairs.

U.R. to H.D.No.136-Conf1 4th February 1952.

EKN.4/8/

Apart from the question whether the Mela Rules framed under section 23 of the City of Bombay Police Act, 1902, are ultra vires or not, the Rules do not provide for any particular information being given about the age of the performeres, nor is any application form prescribed by the Rules requiring such information. In these circumstances the fact that the applicant did not furnish information on this point will not render him liable for an offence under section 177 or section 182 I.P.C. Even for purposes of section 182 it has been held that there is nothing in the section showing that it intends to punish the withholding of information as distinct from the actual giving of information, and that where such is the intention of the Code, the Code does not hesitate to say so, as for example in section 415: Sher Mohammad v. the Crown (I.L.R.21 Lahore p.396). Action for an offence under these sections is not, therefore, feasible. Whether action is feasible for the breach of the provisions of rule III would depend upon the question whether the Rules are intra vires which I understand is being separately considered.

Sd/ P.M.Lad.
1/2

Remembrancer of Legal Affairs.

U.R. to H.D. No.1695, dated 2nd February 1952.

VGP. 4-8-56.

The Secretary, Local Self Government and Public Health Department considers that pending the amendment of the Municipal Acts and the Bombay Local Boards Act as advised by the R.L.A. in his opinion No.1752 dated the 4th February 1952, it may be possible for the District Magistrate to prohibit the use of any vehicles or vessels, subject to certain exceptions, by issue of an order under clauses (a) and (m) of section 39 of the ~~Bombay~~ Bombay District Police Act.

The Bombay District Police Act,1890, has been repealed by the Bombay Police Act, 1951. The provisions analogous to clauses (a) and (m) of section 39(1) of the former Act are contained in clauses (a) and (b) respectively of section 33(1) of the latter Act. Clause (b) of section 33(1) of the Bombay Police Act, 1951 provides that the Commissioner and the District Magistrate, in areas under their respective charges or any part thereof, may take, alter or rescind rules or orders not inconsistent with this Act for~~xxx~~ for regulating traffic of all kinds in streets and public ~~by xxxxxx~~ places, and the use of streets and public places by persons riding, driving, cycling, walking or leading or accompanying cattle, so as to prevent danger, obstruction or inconvenience to the public. Clause (a) provides for making similar regulations for closing certain streets or places temporarily in cases of danger from ruinous buildings or other cause, with such exceptions as shall appear reasonable. These provisions are intended to empower the District Magistrate and the Commissioner to make regulations of traffic and for preservation of order in public places. Section 123(6) of the R of People Act, 1957 provides for preventing the hiring or procuring, whether on payment

or otherwise, of any vehicles or vessel by a candidate his agent or by any other person with the connivance of the candidate or his agent for the conveyance of any elector (other than the candidate himself, the members his family or his agent) to or from any polling station provided under section 25 or a place fixed under sub-section (1) of section 29 for the poll. The prevention of the hiring or procuring of any vehicle under that provision is not intended to regulate traffic or preserv order in public places. Consequently, no regulations under clauses (b) and (s) of sub-section (1) of sectic 33(1) of the Bombay Police Act, 1951, can be made on the lines of section 123(6) of the Representation of the People Act, 1951. The proposal made by the Secretary, Local Self Government and Public Health Department woul not be legally feasible.

Sd/ P.M.La.d
1/2

Remembrancer of Legal Affairs.

U.R. to L.S.G.& P.H.D.No.2197, dated the 11th February 1

VGP. 4-8-56.

Submitted with reference to H.D. note at page 75 ante. Please see that R.L.A.'s Opinions at pages 67 and 73 ante. The H.D. presumes that the transfers of Police Officers from the districts to Greater Bombay and vice-versa can be effected without consideration of the fact that they may adversely affect the propects of promotion of officers, as provision has been made for such transfers by legislative enactments and Government is under no obligation to take into reckoning the effect of the transfers on the prospects of officers. The R.L.A. is requested to advice whether the presumption made by H.D. is correct. The H.D. also proposes to inform the Bombay Public Service Commission accordingly.

2. As observed by the R.L.A. in his opinion No.1016-Confl. dated 7th December 1951, though under clause (i) of the Proviso to section 5 of the Bombay Police Act,1951 the rules or orders applicable to the City and District Police Forces constituted under the Bombay City Police Act and the Bombay District Police Act are continued in force both the forces have now become one and are not different services. Transfers from one place to another (for example from Greater Bombay to the District and vice versa) would, therefore, be one of the normal features of the service; and the factthat some transfers might affect the prospects of particular officers would not come in the way of the exercise of that power conferred upon Government by law. When their states remains the same after transfer The presumption made by the H.D. appears to be correct.

Sd/-
D.S.(O) Sd/- Sd/J.R.Dhurandhar.
11/2

VGP. 4-8-56. Addl Secy

As observed by the Remembrancer of Legal Affairs in his opinion No.1016-Confl., dated the 7th December 1951, though under clause (i) of the proviso to section 5 of the Bombay Police Act, 1951, the rules or orders applicable to the City and District Police forces constituted under the Bombay City Police Act, 1902, and the Bombay District Police Act, 1890, are continued in force both the forces have now become one and are not different services. Transfers from one place to another (for example from Greater Bombay to the Districts and vice-versa) would, therefore, be one of the normal features of the service; and the fact that some transfer might affect the prospects of particular officers would not come in the way of the exercise of that power conferred upon Government by law when their status remains the same after transfer. The presumption made by the Home Department appears to be correct.

Sd/ J.R.Dhurandhar.
12/2

Additional Secretary to Government.

U.R. to H.D. No. 163-Confl dated the 12th February 1952

VGP. 4-8-56.

OFFICE OF THE R.L.A.

Sub-section (1) of section 33 of the Bombay Police Act, 1951, specifies the various matters in respect of which rules can be made by the District Magistrates. Clause (w) refers to the licensing or controlling of place of public amusement or entertainment. Under para (iii) of this clause rules can be made regulating the means of entrance and exit at places of public amusement or entertainment or assembly, and providing for the maintenance of public safety and the prevention of disturbance thereat. It will be seen that it is now competent for the District Magistrate to make a rule that the licence shall be liable to be cancelled both on the ground of public safety and the prevention of disturbance thereat and the clause as now worded sufficiently meets the objection raised by the High Court in Civil Application No. 522 of 1951. appears therefore to be necessary. The view expressed in para 1 of the H.D. note appears to be correct.

Sd/ P.M.LAD.
25/2/52

Remembrancer of Legal Affairs.

U.R. to H.D. No.2999, dated the 25th February 1952.

VGP. 4-8-56.

Externment under Bombay Police Act, 1951.

Bombay Police Act, 1951 sec.57 and The Constitution of India Art. 20(1).

The question referred to the R.L.A. are: (1) Whether section 57 of the Bombay Police Act, 1951, can be given retrospective effect by applying it to offences committed before the Act came into force; (2) Whether the time within which the externee Shri Balkrishna Mahadeo Lokhande been asked to remove himself can on the wording of the Order be said to be definite.

3. Taking the second question first, it cannot be said that the time specified in the order is definite. By the Order Shri Lokhande is directed to remove himself outside the limits of Greater Bombay by rail (Central Railway) "within two days from the date of the disposal of the case viz. Lamington Road Police Station L.A.No.18477 of 1951 pending against him." The words "the date of the disposal of the case" may be criticised as leaving the date uncertain. In Criminal Revision Application No.1639/1950 (The State vs. Gopinath) the High Court held that the words "after the conclusion of the cases pending against him" left the date vague. It would have been better to specify the date by the words "the date of the judgement of the Court of the Presidency Magistrate in the case etc."

4. By the first question the point really raised is whether section 57 amounts to ex-post-factolegislation and violates Article 20(1) of the Constitution. That Article reads as under :-

> "20(1) No person shall be convicted of any offence except for violation of a law in force at ence except for violation of a law in force the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence."

The answer is in the negative; for it can be successfull contended that the order of externment is whether a conviction of any offence nor a penalty. The fact that a previous conviction on the ground of theft is takeninto consideration does not mean that the externment is in respect of that previous conviction. The externment is rea

that the Externing Authority has "reason to believe that such person is likely again to engage himself in the commission of an offence similar to that for which he was convicted." The angument can be effectively advanced that the determination of this fact is not a conviction nor is the externment which follows this determination a punishment and therefore, Article 20(1) is not applicable to externment which by its nature is preventive and not punitive.

Even assuming that Article 20(1) is applicable on the basis that externment is a penalty, it would be open to Government to urge the following line of reasoning. It has been laid down in American cases that the constitutional provision against ex-post-facto laws is not violated by a statute providing for increased punishment for an offence because of a prior conviction of a like offence even though the prior conviction was had before the statute was passed. In the case of John Mac Donald v. the Commonwealth of Massachusetts (180 U.S. 311) it has been held by the Supreme Court of America that imposing a heavier punishment upon a person convicted of a felony as prescribed by the Massachusetts Statute if he has twice before been convicted of a crime for which he has been sentenced to imprisonment for not less than three years, does not impose any additional punishment for the former crimes, and is therefore not in violation of constitutional provisions against ex-post-facto laws. If Balkrishna is not born in Greater Bombay his conviction under Chapter XVII of the Indian Penal Code before the passing of the Bombay Police Act, 1951, can be taken into consideration for passing an order of externment, under section 57 of the Police Act. Such an order of externment would not be unconstitutional.

sd/P.M.L

R.L.A

w.r.to H.D. No. 3362/22-1962

The R.L.A. is requested to advise on the question raised by the District Magistrate, Mehsana, in para 2 of his letter at p. 29 ante viz. whether under section 33 of the Bombay Police Act, 1951, it is competent for a District Magistrate to make orders without the previous sanction or control of the State Government.

2. The opening words of section 33 of the Bombay Police Act, 1951, empower the Commissioner of Police and the D.Ms. to make, alter or rescind rules or orders not inconsistent with the Act. Clause (i) of sub-section (2) of that section provides that the power of making rules under clauses (a),(b) and (c) of sub-section (1) is subject to the control of the State Government. Clause (ii) provides that such power under the remaining clauses of that sub-section shall be subjet to the previous sanction of the State Government. Whereas section 33 provides for the power of the D.Ms to make rules or orders, sub-section (2) provides for the control or sanction of Government only in respect of rules. No such control can, therefore, be exercised in respect of orders made by the Commissioner of Police or the D.M. The expressions "rules" and "rules or orders" seem to have been intentionally used with reference to the context. Sub-section (6) of section 33 which refers to previous publication also extends to rules and not both to rules and orders. The term "rules" is defined in section 2(14) but the term "order" is not defined. Apparently they are distinguishable. The view expressed by the D.M.Mehsana appears to be correct and no sanction of Government would appear to be necessary if a D.M. proposes to make an order under section 33(1)(u) of the Act, so long as such order is not inconsistent with the Act.

Sd/ P.M.Lad.
28/3

Remembrancer of Legal Affairs.

U.R. to H.D. No.4831, dated the 29th March 1952.

The question raised for the consideration of the R.L.A. is whether under the Bombay Police Act, 1951, it is competent for the Inspector General of Police to transfer police officers from Greater Bombay to the mofussil and vice versa. The I.G.P. is of the view that this specific power willhave to be delegated to him; while the H.D. considers that in view of section 28(1) no further powers are necessary.

2. Sub-section (1) of section 28 of the Bombay Police Act, 1951, provides that every police officer not on leave or under suspension shall for all purposes of the Act be deemed to be always on duty, and any police officer or any number or body of police officers allocated for duty in one part of the State may, if the State Government or the I.G.P. so directs, at any time be employed on duty in any other part of the State for so long as the services of the same may be there required. It does not appear that this provision empowers the I.G.P. to effect routine transfers from one District or area to another in the normal course The main object of this provision appears to be the liability of police officers to be employed on police duty in any part of the State. The section contemplates emergencies which necessitate the employment of additional or specialised or expert officers. The words used in the sub-section are "employed on Police duty" and "so long as the services of the same may be there required;" if the intention was otherwise section would have provided for the liability of police officers to be transferred from one parts of the State to another. But such a specific provision does not appear to be necessary since the police force for the whole State is now one (vide section 3); and transfer from one part to another is nothing unusual. However, in view of the general superintendence vested in the State Government (vide section 4) and the provision made in sub-section (1) of section 6 that the I.G.P. can exercise such powers as may be provided by or under the Act or orders made by the State Government it would appear necessary to

to empower him to exercise such powers of transfer specifically. The view expressed by the I.G.P. in this respect appears to be correct.

3. The other question raised by the H.D. is whether a police officer transferred from Greater Bombay to the districts will have to be paid the same pay and allowances, as he was getting in Greater Bombay until rules contemplated by proviso (i) to clause (b) of section 5 have been framed. Under clause (b) the power to determine the pay and allowances of police officers is vested in the State Government. But proviso (i) continues in force the rules and orders governing the pay and allowances of the forces constituted under the two repealed Acts until such rules and orders are altered or cancelled under rules made under clause (b). No such rules having been framed by Government yet the officers will be governed by rules made under the respective Acts. The view expressed by the H.D. in this respect appears to be correct. Attention in this connection is invited to R.L.A.'s opinion No.8021 dated the 14th June 1950.

Sd/ J.R.Dhurandhar.
27/3

Additional Secretary to Government.

U.R. to H.D.No.297-Confl, dated the 27th March 1952.

VGP. 4-8-56.

The material portion of section 56 of the Bombay Police Act, 1951, reads as follows:-

"Whenever it shall appear ..... to .... (a) that the movements or acts of any person are causing or calculated to cause alarm, danger or harm to person or property, or (b) that there are reasonable grounds for believing that such person is engaged or is about to be engaged in the commission of an offence involving force or violence or an ofence punishable under Chapter XII, XVI or XVII of the Indian Penal Code, or in the abetment of any such offence, and when in the opinion of any such officer witnesses are not willing come forward to give evidence in public against such person by reason of apprehension on their part as regards the safety of their person or property. ... ".

The underlined words "any person" and "such person" show that the clause "when in the opinion" is intended to apply both to clauses (a) and (b).

Sd/ P.M.Lad.
6/5

Remembrancer of Legal Affairs.

U.R. to H.D.No.7195, dated 7th May 1952.

VGP. 4-8-56.

Bom. Police Act, 1951. Sec. 33(1).

The view taken by Secretary Home Department in his note dated 23rd August 1951 at pp. 29-30 ante is correct. The power of Control and Supervision under the second proviso to section 33(1) of the Bombay Police Act would not constitute Government an appellate authority. Government will have merely revisional and controlling powers under that provision.

Sd/ J.R.Dhurandhar.
15/3

Additional Secretary to Government.

U.R. to H.D. No.4068, dated the 17th March 1952.

VGP. 6-8-56.

The question raised for the consideration of the R.L.A. is whether the Mela Rules framed by the Commissioner of Police in 1950 are intra vires section 23 of the City of Bombay Police Act,1902, and now of the Bombay Police Act,1951. The principal provisions of the Rules will be found in Rules II,III and IX. Rule II requires an application for a permit to be accompanied by the script of the songs, plays, e tc. intended to be sung or performed by the mela. Rule III requires that no organiser shall employ a boy or girl below the age of 10 or a female over the age of 12 as artists in the mela. Finally rule IX defines "Mela" to mean a team of two or more persons organised for exhibition of music, dramatic, dancing, mimetic and other performances of public entertainment. The relevant prcvision in the City of Bombay Police Act, 1902, to be considered were clause (e) of sub-section (1) of section 23 and clauses (d) and (s) of sub-section (2) of that section. When the matter was referred to the R.LA. in 1947, the R.L.A. in his opinion No.8070, dated 6th August 1947 advised that the object which Government had in view could be achieved by having resort to the above provisions. Under sub-section (1) of section 23 however the Commissioner of Police could give orders either orally or in writing as was necessary from time to time as occasion required. Similarly sub-section (2) empowered the Commissioner of Police to issue prohibitory orders whenever and for such time as he considered necessary for the preservation of public peace or public safety. The words in both the sub-sections "as occasion may require" and "whenever and for such t ime as he considers necessary" however suggest that such orders could only be of a temporary nature with a view to preventing annoyance to the

public and preserving the public peace or public safety. Now the Rules made by the Commissioner of Police are of a general and permanent nature applicable to all the melas falling within the definition of that expression and organized during whatever period of the year. Orders under that section could be issued as and when required. For these reasons the rules in question appear to be beyond the scope of section 23 and they cannot be said to have been saved by section 167(1) of the Bombay Police Act, 1951. Nor does it appear that such rules will be within the field of section 37(e) and (f) of the Bombay Police Act, 1951. The view taken by the Secretary, Home Department is correct.

Sd/ J.R.Dhurandhar.
26/6

Additional Secretary to Government.

U.R. to H.D. No.8766, dated the 26th May 1952.

VGP. 6-8-56.

Office of the R.L.A.

H.M. (Health) has perhaps in view of the recen judgement of the Supreme Court in the case of Gurbachan Singh V. State of Bombay; but in that case sub-section (1) of section 27 of the old Bombay City Police Act, was held valid. The judgement of the Bombay High Court in the case of Shaikh Hussein Shikh Mohomad, 55 Bom. L.R. 579 held ultra vires section 27(2-A) of the City of Bombay Police Act, 1902, mainly on the ground of discreminatory treatment. That judgement was acquiesced in, and in the Bombay Police Act,1951, the Select Committee omitted that discreminatory part. That section has now been reenacted as section 57 of the Bombay Police Act. Section 27(1) has also now been transformed into section 56 of the Act with modifications. In this particular case, therefore, if the case falls under section 57 of the Bombay Police Act, 1951, suitable action can be taken against Dr. Nara.

Sd/ P.M.Lad.
4/6

Remembrancer of Legal Affairs.

U.R. to L.S.G. & P.H.D. No. 9359, dated the 5th June 1952.

VGP. 6-8-56.

The questions raised for the consideration of the R.L.A. are:-

(1) Whether the Carrom Houses described at page 13 ante are places of public amusement within the meaning of the Bombay Police Act, 1951. ?

(2) Whether they could be licenced under any of the rule for licensing and controlling theatres and other places of public amusement (Mofussil) ?

2. The expression 'place of public amusement' as defin in section 2(9) of the Bombay Police Act, 1951, means any place where music, singing, dancing or any diversion or game, or the means of carrying on the same, is provided and to which the public are admitted either on payment of money or with intention that money may be collected from these admitted and includes a race course, circus, theatre, music hall, billiard room, bagatelle room, gymnasium, fencing school, swimming pool or dancing hall. What is required under the definition is (1) the provision of a game or means of carrying on the game; and (2) admission of the public on payment of money or with the intention of collecting money from them. Both these requirements are present in this case. The supply of carrom boards and the payment of charges are sufficient to make the carrom houses fall within the definition of the espression 'place of public amusement'. The answer to the first question is in the affirmative.

3. It is presumed that the rules made by the District Magistrate, Sholapur, are similar to the model rules. The definition of premises is given in these rules as under -

1". The word "premises" in the following rules means any building or enclosure towhich which the public are admitted to witness any entertainment on payment of money.

This definition and the general scheme of the Rules show that they are intended to apply to places like

theatre where the public are admitted to ~~ex~~ witness an entertainment. These Rules are not apt for application to places where the public are admitted to participate in the entertainment or games etc.

If it is intended that such places should also be licensed as they should be the rules may be suitably modified by expanding the definition of premises on the lines of the definition in section 2(9) of the Bombay Police Act, 1951, and by including separate rules to suit the special circumstances and requirements of such places.

Sd/ P.K.Lad.
3/6

Remembrancer of Legal Affairs.

U.R. to H.D. No. 9548, dated the 7th June 1952.

VGP. 6-8-56.

Office of the R.L.A.

The point of discrimination has been considered by the R.L.A. in his opinion. However, as stated therein it is necessary to obtain the advice of the Government of India first, because in case the matter has to be defended in a Court of law, the attitude of the Governme of the India and the reasons therefore will have to be explained to the Court. Until, therefore, a reply is received from the Government of Indi a, no useful purpo will be served by consulting the Advocate-General. In the meantime, as a notice of suit has already been give the status quo may be maintained. If ~~suit~~ ultimately it is decided to cancel the directionm the suit will automatically fall through. The R.L.A. would, therefor suggest that the Government of India's views may be obtained immediately, and the case referred to him agai for advice.

Sd/ P.M.Lad.
18/7

Remembrancer of Legal Affairs.

U.R. to Home Department No. 693-Confl, dated the 18th July 1952.

VGP. 6-8-56.

R.I.No.7829
21-4-52.

Submitted with reference to H.D. note at p.21 ante.

In view of the disturbed condition prevailing in Valam, a village in the Visnagar Taluka of the Mehsana District, it is proposed to employ additional Police there. As regards the recovery of the cost thereof, the D.M. has proposed that it should be recovered from the adult male Patidar inhabitants of the village, excluding Govt. servants. While the D.I.G.P., N.R., has proposed that servants of the Village Panchayat and members of the Village Defence Organization should also be exempted. H.D. thinks that in view of R.L.A.'s opinion No. 3415 dated 24-2-51, such exemptions will not be in keeping with the provisions of the law on the point while as regards recovery of the cost of the additional Police from the Patidar inhabitants of the village only, it is of the view that there is no objection to the recovery of such cost from them as it is a well-defined class and having regard to the facts of the case, the classification can be called reasonable. The papers have now been referred by it to the R.L.A. for advice.

Sd/

VGP. 6-8-56.

The view taken by the Home Department is correct (See R.L.A.'s opinion No.10041, dated the 16th June 1952)

86/ P.H.LAD
18/6

Remembrancer of Legal Affairs.

U.R. to H.D. No.10220, dated the 19th June 1952.

VGP. 6-8-56.

IMMEDIATE.

In this case the order by which the externee was asked to remove himself by 12.2.1952 was served on him on 17.3.1952. It was therefore physically impossible for the externee to comply with the direction. The direction itself could not in the circumstances of the case be brought within the ambit of section 56 of the Bombay Police Act which requires the authority issuing the order to prescribe the time within which the proposed externee is to remove himself. The direction as to time must necessarily be capable of compliance. In the circumstances the order should be cancelled. If this view is accepted H.D. may instruct District Magistrate, Thana, to cancel the order. The G.P.H.C. will be instructed accordingly. The case is fixed on board.

Sd/P.M.Lad.
14/7

Remembrancer of Legal Affairs.

U.R. to H.D. No.11620, dated the 14th July 1952.

VGP. 6-8-56.

In Rajwade's case to which the Commissioner of police has referred, the point now under consideration was not raised and was not considered.

2. There is no objection to the use of expression "final order" in place of the expression "judgement".

Sd/ P.H.Lad.
12/7

Remembrancer of Legal Affairs.

U.R. to H.D. No. 11652, dated the 15th July 1952.

VGP. 6-8-56.

Office of the R.L.A.

There would be no objection to arrest the persons and later on release them without prosecution. Under section 64(b) of the Bombay Police Act, 1951, it is the duty of every Police Officer to prevent the commission of cognizable and within his view of non-cognizable offences and under section 72 of the same Act, any police officer can, without any order from a Magistrate and without a warrant, arrest any person who commits offences specified therein including a breach of an order or notification under section 37 of the Police Act. In view of these powers, it would be open to the police officers to arrest and detain the law-breakers; but in view of the provisions of Article 22(2) of the Constitution nos such person can be detained in custody for more than 24 hours without the authority of a magistrate.

Sd/ P.M.LAD.
23/6

Remembrancer of Legal Affairs.

U.R. to H.D. No. 593-Confl, dated the 23rd June 1952.

VWP. 6-8-56.

Employment of additional Police- Bombay Police Act, 1951 - sect. 50.

Section 50 of the Bombay Police Act, 1951, provides that the cost of the additional police shall be a tax imposed under the section. Under that section the State Government may require the cost of the additional police to be recovered generally from all persons who are inhabitants of the disturbance area or specially from any particular section or sections or class or classes of such persons. If, as stated in D.S.,H.D.'s note of 22-4-52 at p. 18 ante, the Thakarda inhabitants of the village are a well defined class, there will be no objection to recovering the cost of the additional police, which is a tax, from that class. Such recovery of the tax from such class would not be violative of the constitutional limitation contained in article 14 of the Constitution. This view gains support from the decision of the Supreme Court of America in the case of Albert A Carmichael v. Gulf States Paper Corporation (81 Law Edition 1245) in which it has been held that neither due process nor equal protection imposes upon a State any rigid rule of equality of taxation and inequalities which result from the singling out of one particular class for taxation or exemption infringe no constitutional limitation.

Sd/P.N.Lad
14/6

Remembrancer of Legal Affairs.

U.R. to H.D. No.10041, dated the 16th June 1952.

VGP. 6-8-56.

Office of the R.L.A.

Express permission under section 63(1) of the Bombay Police Act, 1951,- is necessary. A revised draft order of such permission is appended.

Sd/ P.M.Lad.
24/7

Remembrancer of Legal Affairs.

U.R. to H.D. No. 12293, dated the 25th July 1952.

VGP. 6-8-56.

No.S.153(8)/43657-H.
Home Department,
B.C., July 1952.

ORDER.

Whereas a direction under section of the Bombay Police Act, 1951, has been issued against Shri by directing him to remove himself outside the area comprising , and not to enter or return to the said area;

And whereas a case No. is pending against the said Shri in the Court of , in which the presence of the said Shri is required on the dates of hearing of that case in the said Court;

And whereas for that purpose the State Government considers that permission under section 63(1) of the Bombay Police Act, 1951, may be given to the said Shri to enter or return to the said area for the purposes and subject to the conditions hereafter mentioned;

Now, therefore, in exercise of the powers conferred by section 63(1) of the Bombay Police Act, 1951, the State Government hereby permits Shri to enter into and remain within the limits of on the dates fixed by the said Court for the hearing of the said case and th he shall observe the following conditions:

By order of the Governor of Bombay,

Assistant Secretary to the Govt. of Bombay,
Home Department.

Bombay Police Act, 1951.

Section 37.

Control over Melas.

L.D. is requested to advise whether, pending special legislation it would be possible for the District Magistrate and the Commissioner of Police to issue a notification under section 37 of the Bombay Police Act, 1951, regulating melas during the period of the Ganapati Festival and a few days beyond.

2. The view taken by the Home Department that there is no alternative but to discontinue the existing Mela Rules is correct (vide Additional Secretary's opinion No.8766 dated the 26th May 1952). Section 37(1) of the Bombay Police Act,1951, enacts that the Commissioner and the District Magistrate in areas under their respective charges may, whenever and for such time as he shall consider necessary for the preservation of public peace or public safety, by a notification publicly promulgated or addressed to individuals, prohibit at any town, village or in the vicinity of such town, village or place -

(e) the public utterance of cries, singing of songs, playing of music,

(f) delivery of harangues, the use of gestures or mimetic representations, and the preservation, exhibition or dissemination of pictures, symbols placards or any other object or thing which may in the opinion of such authority offend against decency or morality or undermine the security of or tend to overthrow the State."

Under these provisions the Commissioner of Police and the District Magistrate can exercise a limited control over the Melas and prohibit them from indulging in certain acts as provided in clauses (e) and (f) of section 37 and there would be no objection to their issuing a notification prohibiting these acts during the Ganapati Festival and a few days thereafter, if such prohibition is in their opinion necessary for the preservation of public peace or public safety.

Sd/ J.R.Dhurandhar.
4/8

Additional Secretary to Government.

U.R. to H.D. No.12920, dated the 4th August 1952.

Whether clubs where admission is restricted to members are places of Public amusement.

Bombay Police Act, 1950. S.2(9) and Bombay District Police Act, 1890 S.39A and Rules thereunder.

The Ahmedabad Gymkhana Club and the Shahibag Club, it is reported hold cinema shows on their premises which are open only to the members and their guests. An admission fee is also charged but the same is charged for meeting the expenses and not for profit and full entertainment duty is being paid. The shows are not open to the public. The Clubs have been given temporary licences to hold the show but the question raised for consideration of the R.L.A. is whether, if the admission is restricted to members and bonafide guests, the premises can be considered a place of public amusement.

2. The Rules for licensing premises have been originally framed under section 39A of the Bombay District Police Act, 1890. In the preamble these Rules refer to the licensing and controlling of theatres and other places of public amusement but these terms have not been defined. In Rule 1, however, the word "premises" is defined and it means "any building or enclosure to which the public are admitted to witness any entertainment on payment of money." It is clear from this that before these Rules can apply to any premises, they must be such as are open to the "public". "Public" means the body of the people at large; the community at large the people; (Iyer's Law Lexicon, p.1038). A Club which is only open to the members and to their guests cannot be held to be open to the public at large and the club premises will not fall within the definition of that term in the Rules. Consequently, the Rules will not be applicable to the Clubs in question. The term "place of public amusement" has now been defined in section 2(9) of the Bombay Police Act, 1951 and means any place where music, singing, dancing, or any diversion or game, or the means of carrying on the same, is provided and to

and to which the public are admitted either on payment of money or with the intention that money may be collected from those admitted and includes a race course, circus, theatre, music hall, billiard room, bagatelle room, gymnasium, fencing school, swimming pool or dancing hall. Under this definition, as pointed out by the R.L.A. in his opinion No.9548 dated 7th June 1952, it is one of the requirements that the public must be admitted to the place on payment or with the intention of collecting money from them. This requirement is obviously not satisfied in respect of the Club if the admission is restricted to the members and in the circumstances such a club will not fall within the definition.

Sd/P.M.Lad.
30/6

Remembrancer of Legal Affairs.

U.R. to H.D. No.619/Confl. dated the 30th June 1952

VGP. 6-8-56.

Submitted.

2. These papers relate to the claim of the Dehgam Municipality for the general water rate in respect of police buildings situated within its limits. It appears the Municipality has erected about 18 or 19 water pipe stand-posts in different localities in the Town and it is from these stand-posts the public including the police personnel stationed there draw their supply. It is not known under what provision this water rate is claimed in respect of the police buildings. Rule 5 of the Water Tax Rules made by the Municipality under the Baroda 'B' Class Municipal Act provides for the levy of such tax when water connections have been made to Govt. buildings. No such special connections have been fitted to these police buildings. Under the Schedule to these rules which have been continued in force by section 180-A of the Bom. District Municipal Act, 1901, all Govt. buildings are exempt from payment of the general water rate. The H.D. considered that in view of section 154 of the Bombay Police Act the police lines would not be liable to the general water rate. In the L.S.G. & P.H.D. office note a reference is made to Addl. Secretary's opinion No. 13702 dated the 27th August 1951 and the same view has been expressed. The R.L.A. is requested to advise.

Sd/ P.H.Lad.
19/7

H.L.A.

VGP. 6.8.52.

Bombay Police Act, 1951.
Section 154.

Police lines at Dehgam - General water rate.

Seen and returned.

The view taken by Local Self Government and Public Health Department is correct.

Sd/P.M.La.d
23/7

Remembrancer of Legal Affairs.

U.R. to L.S.G. & P.H.D. No.12223, dated the 24th July 1952.

VGP. 6-8-56.

L.D.R.I.No. 533-Confl
dt. 10-6-52.

Submitted.

The District Magistrate, Dharwar, has issued an order under Rule 12A of the Rules under Sec. 39A of the Ditrict Police Act, 1890, in the following terms:

Under Rule 12A of the Rules framed under Sec. 39A of the Bombay District Police Act (IV of 1890) the District Magistrate, Dharwar is hereby pleased to prescribe that no person keeping a place of public entertainment in the limits of Dharwar, Hubli and Gadag-Betgeri Municipal Boroughs shall play or allow any music to be played, in such places between 11 a.m. and 6 p.m. of the day without obtaining the previous permission of the District Magistrate to be endorsed on the license."

In view of Addl. Secy's opinion No.11935 dated the 26th October 1949, H&D considers that the D.M.'s order requiring a permit for the playing of music between certain hours in places of publicentertainment, though it does not prescri e any fee for the permit, is not in order and goes beyond the scope of Rule 12A. The D.S.H.D., however, disagrees. He considers that orders under Rule 12A may be general or special and that general orders can be subject to exceptions. The R.L.A. is requested to advise.

Sd/ P.M.Lad.
17/6

VGP. 6-8-56.

OFFICE OF THE R.L.A.

The view taken by the Deputy Secretary, H.D. is correct. The District Magistrate's order at page 3 ante does not require owners to take put a permit but merely provides for granting exemptions in particular cases by an endorsement on the licence for playing music during the prohibited hours. A power to prohibit will include a power to exempt from the prohibition and the District Magistrate's order will not be ultra vires the Rule 12[4] as presumed by the H.D.

Sd/P.M.LAD.
18/6

Remembrancer of Legal Affairs.

U.R. to H.D. No. 10216, dated the 19th June 1952.

VGP. 6-8-56.

The Bombay District Police Act, 1890, has been repealed by the Bombay Police Act, of 1951. Sub-section (2) of section 167 of the latter Act saves legal proceedings pending in any court or before any officer on the date on which that Act comes into force. The expression "legal proceeding" has not been defined in the Act or in the General Clauses Act. According to Law Lexicon, it means a proceeding regulated or prescribed by law in which judicial decision may or must be given. (Iyer's Law Lexicon page 718). The proceedings which have taken place in this case, namely, the making of applications by the persons concerned for compensation, and their consideration by the Magistrate after making necessary inquiries, can hardly be considered as legal proceedings. According to the principle enunciated by the Supreme Court in the case of the 'Province' of Bombay vs. Advani,' 1950, S.C.J., 451, acts of the Magistrate under section 25A, including the holding of inquiry, are neither judicial nor quasi-judicial acts. They are administrative acts. Whatever be the doubt regarding the proceedings under section 25A of the repealed Bombay District Police Act, they were set at rest by the insertion in 1947 of new sub-section (4-A) in section 25A under which the Magistrate had to discharge his functions under the section under the general or special orders of the Government. It would, therefore, follow that the functions which the Magistrate would discharge under section 25A would be pure administrative functions and would not involve any legal proceedings in the sense in which that expression is generally understood.

2. It will be, however, possible to hold that section 51 of the Bombay Police Act, 1951, would apply in this case. The Bombay Police Act, 1951, came into force on 1st August 1951, but the riots in this case took place

on 3-5-1951, that is, before the date on which the Act came into force. In view of this provision it will be possible to argue that if section 51 is applied in this case, it would have retrospective operation. But the statute "is not properly called a retrospective statute because a part of the requisites for its action is drawn from a time antecedent to its passing." (See Craies on Statute Law, 5th Edition page 357). Although, therefore, in the present case the loss or damage may have been before the Bombay Police Act, 1951, came in to force, it will be possible to take action as prescribed in section 51 of the Act. The view taken by Deputy Secretary, H&D. in his note at page 51 is, therefore, correct.

Sd/ P.M.Lad.
18/8

Remembrancer of Legal Affairs.

U.R. to H.D. No. 13635, dated the 10th August 1952.

VGP. 6-8-56.

Writing of defamatory articles in a newspaper with a view to blackmail and extort money from a person who is defamed in such articles cannot be said to be a movement or an act which is causing or calculated to cause alarm, danger or harm to person or property and therefore, an externment order passed on those facts will not fall within the ambit of section 56(a) of the Bombay Police Act, 1951. Moreover, in the present case, it appears from the statement of Dr. Chidgupkar recorded by the Police that he was ready to go to a Court of law against Shri Chivate for the defamatory article against him. It cannot, therefore, be said that he was unwilling to come forward to give evidence in the public against Shri Chivate. Lastly, neither the notice issued to Shri Chivate under section 59(1) nor the externment order passed against him under section 56(a) clearly discloses the fact that by reason of apprehension on their part as regards the safety of their person or property the witnesses are not willing to come forward to give evidence in public against Shri Chivate. The order of externment passed against Shri Shivate under section 56(a) of the Bombay Police Act, 1951, therefore, cannot be justified.

Sd/P.M.LAD.
3/9

Remembrancer of Legal Affairs.

U.R. to H.D. No. 14349, dated the 4th September 1952.

VOP. 8-8-56.

Submitted.

The District Magistrate, Belgaum and the District Magistrate, Sholapur have issued orders in exercise of powers conferred on them by Rule 12-A of the Rules framed under sect .33(1)(w) of Bom.Police Act, 1951, banning theplaying of gramphone records by the keepers of the places of public entertainment at any time of the day of night in certain municipal areas in their respective district. A representation against these orders is made by the Gramophone Company Ltd. which contends that this complete stoppage of music is beyond the provisions of law and beyond all requirements. The Company has, therefore, requested that the ban should be removed. The H.D. has considered the history of the ban, which the considered beneficial, in its office note dt. 23.5.52 and the papers are now referred to R.L.A. for advice whether it is legally wrong, as the D.Ms have done, to ban the playing of gramophone music completely.

Rule 12A provides that "no person keeping a place of public entertainment shall play or allow any music to be played in such place between such hours as may by general or special order be prescribed by the District Magistrate in that behalf." Under this Rule, as pointed out by Additional Secretary in his opinion No.11935 dated the 26th October 1949, it is implied that the holder of the licence is permitted to play music or allow music to be played on his premises, between such hours as may be prescribed by the District Magistrate. Total banning of music is not contemplated by this Rule. The Rule contemplates merely regulation of hours and this power will not include a power to prohibit (see R.L.A.'s opinion No. 1230 dated 6-2-47 and cases cited therein). In view of this position the orders issued by the D.M., Belgaum, and the D.M. Sholapur, would not be intra vires Rule 12A and would be void. Powers under section 33(1)(n) of the Bombay Police Act, 1951, are precisely for the same purposes as those under the oldsection 39A of the Bombay District Police Act corresponding to section 33(1)(w). The proper course would, therefore be to amend Rule 12A suitably but not so as totally to forbid any kind of music at any hour. An amendment of this latter kind would be unreasonable and would not, therefore, be competent. However, it would be permi - ssible to impose restrictions in the matter of time when the music can be played or the nature of the music or the noise created thereby.

Sd/ P.H.LAD.

Remembrancer of Legal Affairs.

U.R. to H.D.No.3893, dated the 13th June 1952.

VGP. 8-8-56.

Mela Rules.

The questions raised for R.L.A.'s consideration are :-

1) Whether the Mela Rules framed by the District Magistrates under section 61(1)(h) of the Bombay District Police Act, 1990, are valid Rules in view of the provisions of section 31(1)(h) now reproduced as section 104 of the Bombay Police Act, 1951, and whether Melas cannot be controlled under this section both in the City of Bombay and in the mofussil;

2) Whether in view of the statement of the Commissioner of Police that public peace or security is not likely to be affected by the Melas, it would be competent to him to resort to section 37, clauses (e) and (f) and to issue orders; and

3) Whether, since it is desirable to check the Melas, section 37 should not be so amended as to empower the Commissioner of Police and the District Magistrates to prohibit or regulate delivery of harangues etc. which in the opinion of such authority offend against decency or morality though no apprehension is caused in regard to public peace or public safety.

2. Section 104 of the Bombay Police Act, 1951 enacts:

> " No person shall exhibit, contrary to any regulation made and notified by the Commissioner or a District Magistrate, as the case may be, any mimetic musical or other performance of a nature to attract crowds or carry or place bulky advertisements pictures, figures or emblems in any street or public whereby an obstruction to passengers or annoyance to the inhabitants may be occasioned."

A regulation can be made under section 104 for controlling Melas and as the power is not circumscribed by any considerations as are to be found in section 37, it appears than it would be open to the Commissioner of

Police and the District Magistrate to impose such restrictions on the performances as can be reasonably related to the mischief which that section seeks to prevent. The existing Rules in force in the Districts framed under section 61(1)(h) of the District Police Act, 1890 which is now reproduced as section 104 of the Bombay Police Act, 1951, would be saved by section 167 (1)(i) and they can be enforced in the Districts. The Commissioner of Police can also frame similar Rules und under this section for the Greater Bombay.

3. Powers under section 37 are to be exercised only when the Commissioner of Police or the District Magistrate considers such exercise necessary for the preservation of the public peace or public safety. If the Commissioner of Police considers, in the light of past experience, that no breach of public peace is likely to be caused, there would be no occasion for him to exercise the powers. The view taken by Deputy Secretary, Home Department, in this respect and alsinin respect of a clause (f) is correct.

4. The amendment of section 37 seems expedient if it is ibtended to control for reasons other than those specified in section 104.

Sd/P.M.LAD.
22/8

Remembrancer of Legal Affairs.

U.R. to H.D.No. 13802, dated the 22nd August 1952.

VGP. 6-8-56.

In the case of preventive detention it is now well established that where an earlier order of detention is defective purely on formal grounds there is nothing to preclude a proper order of dentention being passed on the pre-existing grounds themselves.(See Basant Chandra v.King Emp. 47 Bom L.R. 39 to and Haranjan Singh v. State of Punjab, 1952 S.C.J. 111). Similar considerations will apply to a case of externment and there would be no objection to passing a fresh order of externment when the previous order has been cancelled merely on account of technical defects.

Sd/P.K.Lnad.
26/8

Remembrancer of Legal Affairs.

U.R. to H.D.No. 14231, dated the 30th August 1952.

VGP. 6-8-56.

Bombay Police Act, 1951.

Section 154.

Bombay Provincial Municipal Corporations Act, 1942.

Section 133(1).

Police buildings - liability to pay contribution.

The question raised for the R.L.A.'s consideration is whether the police buildings at Ahmedabad, which are exempt from any municipal or local rates under section 154 of the Bombay Police Act, 1951, would be liable to pay a contribution in lieu of general tax under section 133(1) of the Bombay Provincial Municipal Corporations Act, 1949.

Section 154 of the Bombay Police Act, 1951 provides that no municipal or other local rates shall be payable by the State Government on account of the occupation or use of any house or place in any area other than Greater Bombay by members of the Police Force for the convenient performance of their duties. Under section 132(1)(c) of the Bombay Provincial Municipal Corporations Act, 1949 buildings and land vesting in Government used solely for public purposes would be exempt from the general tax. Section 133(1) provides that the State Government shall pay to the Corporation annually in two half yearly instalments payable by the 30th day of September and 31st day of March in every year in lieu of the general tax from which buildings vesting in the Govt. are exempted by clause (c) of sub-section (1) of section 132, a sum ascertained in the manner provided in sub-sections (2) and (3). It is clear from this provision that what is levied under section 133(1) is not a general tax nor would it be a rate under section 154 of the Bombay Police Act, 1951, as it is levied in lieu of the general tax (see R.L.A.'s opinion No.2175 dated 23rd February 1949). Consequently the police buildings at Ahmedabad, though exempted from payment of any municipal rate and the general tax, would be liable to pay a contribution as provided in section 133(1) of the Bombay Provincial Municipal Corporations Act, 1949.

Sd/P.M.LAD.
R.L.A.

W.L. to R.S.G.T.P.W.D. No. 13762/22-8-52

It is true that the term 'law and order' is wide enough to cover the entire sphere of the police duties and to include therein both the 'order' and the 'crime' police. However, a distinction appears to have been dm drawn by Government itself between these two categories. According to Rule 120(b) of the Police Manual (1950 Edition) the State Government is responsible for the provision and all charges for 'crime' police while the Railway Administration is responsible for the cost of 'Order' police only. In view of these provisions it would not be open to Government to charge the Railway Company for the cost of 'crime' police. The cost of 'crime' police will have to be borne by Government itself as provided in Rule 120(b) of the Police Manual. That is also in accordance with general principles of administration under which the service of crime police has to be provided by the State to all and no special levy can be made therefore from any party.

Sd/ P.M.LAD.
23/9

Remembrancer of Legal Affairs.

U.R. to H.D.No. 15830/A, dated the 25th September 1958.

VGP. 6-8 -56.

The view taken by the Deputy Inspector General of Police and concurred in by the Inspector General of Police is correct. On expiry of the notice period, the Police Officer would cease to be a Police Officer and also a Government servant and he cannot be compelled to remain in service. (See Additional Secretary's Opinion No.5132, dated 4-4-1952). Consequently, no departmental enquiry can be held against him thereafter. The proper procedure in such cases would be to complete the departmental proceedings before the notice period expires. If that be not found practicable, the only course open would be to amend the provisions as suggested by the Deputy Inspector General of Police.

Sd/P.M.Lad.
9/9

Remembrancer of Legal Affairs.

U.R. to H.D. No. 14833-A dated the 11th Sept. 1952

VGP. 6-8-56.

L.D.
21662 dt. 16.9.52

Submitted.

It is proposed to employ, under section 50 of the Bombay Police Act, 1951, additional police in the village Belwadi, taluka Bailhongal, on account of the lawless activities of the villagers. The D.S.P. in his report dated 30th May 1952 has narrated the criminal activities of the rival gangs operating the village but was observed:

"Though there are of late, no reports of crime from this village, the present inactivity of the parties may be a lull before the storm."

In view of this position H.D. has requested the R.L.A. to advise whether in view of the circumstances reported it would be legal to impose additional police on the village in question.

Sd/ P.M.LAD.
1/10

From the report of the District Superintendent of Police it appears that since the middle of January 1952 there has been no incident in the village and the village quiet. Having regard to the provisions of section 50, it would not, therefore, be feasible to order imposition of additional Police for past acts which may have been committeed nine months ago.

Sd/P.M.LAD.
6/10

Remembrancer of Legal Affairs.

U.R. to H.D.No. 16444/A, dated the 7th October 1952.

VSP. 6-8-53.

Office of the R.D.A.

The accused was prosecuted for having caused obstruction to pedestrians and other traffic in the street (under section 117 read with section 102 of the Bombay Police Act, 1951.). The alleged obstruction was that the accused had allowed a loaded hand-cart belonging to him to remain in the street near his shop for an unreasonable length of time namely, fifteen minutes. The accused denied the obstruction and stated that the hand-cart had been brought only just then, and the labourer may have taken about five minutes to unload it. Beyond the evidence of the two Police Officers there was no evidence to show that there was, in fact, any obstruction or that the obstruction lasted for an unreasonable length of time. Not only was there no independent evidence, but so far as the evidence adduced was concerned namely that of the police officers, it was not such as to inspire confidence. As pointed out by the learned Magistrate they behaved in the witness box in an arrogant manner and showed no respect to the Court. The first information itself showed corrections meant apparently with a view to fit in with the deposition of the police officers in Court. In these circumstances even taking the most charitable view of the prosecution evidence, it is, as pointed out by the Public Prosecutor in his opinion, difficult to say that the case was proved beyond a reasonable doubt. This is therefore not a fit case for an appeal against acquittal.

2. However, the attention of the High Court

may be drawn to the language of the judgment. Whatever view the Court wishes to hold, that view ought to be expressed in sober and dignified language.

Sd/- P.M. Lad
7/11

Remembrancer of Legal Affairs.

M.R. to H.D. No. 1214-Confl., dated 8th November 1952.

KAK/9-8.
4 c.

Section 67(a) of the Bombay Police Act, 1951, declares it to be the duty of a Police Officer to regulate and control the traffic in the streets to prevent obstruction therein and to the best of his ability to prevent the infraction of any rule or order made under this Act or any other law in force for observance by the public in or near the streets. The tenor of this provision read especially with the marginal note shows that it is primarily intended for the purpose of controlling traffic as such and the behaviour of the public in or near the streets, the words "therein" in the expression "to prevent obstruction therein" apparently refers to traffic and not to streets. Therefore, only in so far as squatters can be proved to be causing obstruction in the traffic, would it be possible to press this provision into service for their removal by paying in aid the provisions of sections 68 and 69. Section 102 of the Act deals with obstructions of particular kinds. It is doubtful whether squatting as such would fall within the kinds specified. Leaving belonging on the streets of the nature of boxes, bales or packages can no doubt attract the provisions of this section.

Sd/P.M.LAD.
26/10

Remembrancer of Legal Affairs.

U.R. to H.D. No.17758/A, dated the 27th October 1952.

VGP. 6-8-56.

Externment.

In order to meet any contention on the ground of absence of reasonable opportunity it is desirable to explain to the proposed externee the nature of the complaint and to record, as far as possible, his oral explanation and if he has already put in a written statement to ask him whether he has anything else to say beyond what is stated in the written statement.

2. The practice of using printed or cyclostyled Externment Orders is open to the objection that the externing authority did not apply his mind to the particular case and should be discontinued. Home Department's view on this point is correct.

Sd/ P.M.LAD.
13/11

Remembrancer of Legal Affairs.

U.R. to H.D. No. 19049/A, dated the 15th November 1952.

VGP, 6-8-56.

Shri Mulla was officiating as an Inspector of Police at the time when the alleged default was committed. The Bombay Police Act, 1951, had at that time already come into force; but legally, under the Rules saved by clause (b) of section 5 of the Act, the Inspector-General of Police could have taken disciplinary action against him and punished him departmentally. It is reported by the Inspector-General of Police that Shri Mulla is now reverted and is at present holding the post of Sub-Inspector of Police. A Sub-Inspector of Police is a member of the subordinate ranks and the Inspector-General has undoubted authority to take disciplinary action against him. Therefore, whether we look to the status of the delinquent at the time of the misconduct or at the time of the inquiry, it would seem that that Inspector-General of Police would have authority to take disciplinary action.

Sd/P.M.IAD.
31/10

Remembrancer of Legal Affairs.

U.R. to H.D. No.1135/A-Confl, dated the 1st November 1952.

VGP. 6-8-52.

Dismissal of Shri B - an Inspector of Police.

It will be seen from the judgement recorded by Shah J. that the point that the original order was passed by an Assistant Commissioner of Police and not by a Deputy Commissioner was noticed in the High Court but it appears to have been conceded before the High Court that for the purposes of Rule 8, Shri Deshpande, the Assistant Commissioner, was treated as a Deputy Commissioner and that an appeal against his order properly lay to the Appellate Board. It also appears that it was not disclosed to the High Court that the Appellate Board consisted of a Deputy Commissioner as and as Assistant Commissioner and not of two Deputy Commissioners as required by the Rules as the judgement throughout refers to the Board as consistin, of two Deputy Commissioners. In fact it was also conceded that the appeal was properly heard by the Board. In view of these concessions and in view of the fact that those points which ought to have been taken were not taken before the High Court, Government would now be estopped from raising those issues. Besides in practice the Board as constituted in this case has all along in the past been accepted by Government as a validly constituted Board. The High Court had directed that the order of the Commissioner of Police dated the 8th December 1950 be set aside and that the papers of the case be placed before the Board of Appeal for disposal of the Appeal in such manner as is consistent with the law. That has been done and the Board has ordered reinstatement. That order appears to be final under the Rules framed under the Bombay City Police Act, 1902 and in the circumstances, it would not be open to the Commissioner of Police to pass any order of dismissal against Shri Bharvirkar. Moreover, as the Rules framed under section 7(3) of the City of Bombay Police Act, 1902, which are kept in force, provide that " no police

officer shall be departmentally punished otherwise than as provided in those rules (vide Rule 1(a)) it would not be open to Government or the Commissioner to take action against the officer otherwise than in accordance with the Rules (-Cf. Province of Bombay Vs. Madhukar Ganpat, 53 Bom L.R. 754 at p. 777).

Sd/ P.H.LAD.
2/5

Remembrancer of Legal Affairs.

U.R. to H.D. No.6972, dated the 3rd May 1952.

VGP. 6-8-56.

The Remembrancer of Legal Affairs has been requested to advise whether two of the cases decided by the Additional City First Class Magistrate, Ahmedabad, are fit ones for appeals against the acquittal of the accused.

In one case in which a copy of the judgement has been forwarded, it appears that the accused was charged under section 12(a) of the Prevention of Gambling Act, the allegation being that he accepted Satta bets at a public place. In support of this allegation a bogus customer and one of the panch witnesses, names Chimanlal, were examined. It appears that the panch witness had been used as a panch witness by the Police in three cases previously. This was admitted by him. It also appears that the bogus customer when questioned whether or not he had been used by the Police gave an evasive reply. It is conceded that this bogus customer has subsequently appeared as an accused in a murder case. Although the marked money of rupee one was found with the accused in this case, no satta slip was found. In view of the character and antecedents of the bogus customer and the panch witness, whose was the only direct evidence in this case, and in view of the absence of any satta slip, the acquittal of the accused by the Magistrate cannot be said to be wrong. It is true that in the course of appreciation of evidence the Magistrate has referred to one Govindlal as a panch witness although in fact, he was not a panch witness. But this mistake does not make any difference to general character of the prosecution evidence against the accused and an appeal against the acquittal is not worth while.

The other case was one in which the accused was charged with offences under sections 66(b) and 85 of the Bombay Ptohibition Act. The judgement in that case is not in the papers. But from the facts given in the

copy of the repent of the Dy. S.P. dated 12-6-1952 at page 17 it appears that the accused immediately after arrest was produced before the medical officer of the Civil Hospital at Ahmedabad add the report of that officer was against the prosecution. In the circumstances, the Court cannot be said to be wrong in acquitting the accused. In this case also, therefore, an appeal is not wirthwhile.

The question raised by the High Court regarding investigation into the conduct of the Police Officers should be taken up after copies of correspondence between D.M., D.S.P. and the Magistrate to which the High Court has made reference are obtained.

Sd/P.M.LAD.
9/12

Remembrancer of Legal Affairs.

U.R. to H.D. No.1363/A-Confl, dated the 9th Dec. 1952.

VGP. 7-8-58.

The words "examine such witness" in section 59(1) of the Bombay Police Act, 1951 are used not in the narrow sense of the limitation of rights of examination in chief, cross-examination and re-examination or in the sense of the manner of examination but in its plenary sense. The examination of witnesses is with a view to ascertain whether there are reasonable grounds for proceeding. For that purpose if the witnesses produced by the proposed externee are cross-examined by the Senior Police Prosecutor with the permission of the Authority or officers concerned, no illegality is committed.

Sd/P.H.LAD.
24/11

Remembrancer of Legal Affairs.

U.R. to H.D. No. 19861/A dated the 27th November 1952.

VGP. 7-8-56.

Grant of Cinema permit
Bombay Police Act, 1951 sections 17 and 46.

The facts which give rise to this reference are as follows. Shri K.Z.Patel had applied to the District Magistrate, Thana, for permission to construct a cinema theatre at Goregaon. This permission was refused. Thereupon Shri Patel saw the Deputy Minister, Shri B.J.Patel and he was informed that the objections to granting permission were two viz. (1) existence of one cinema theatre at Goregaon and (2) location of the site of the proposed theatre being in residential area. Shri Patel thereupon made a fresh application to the District Magistrate, Thana, pointing out that the objections were not valid. This application was also refused and now the applicant has approached Government in the matter. In connection with this application, it has been represented to Government that it has powers to revise the orders of the District Magistrate and, therefore the question referred to R.L.A. is whether this contention is correct. Home Department in its note dated 4th November 1952 states that in view of the provisions of sections 46 and 17 of the Police Act, Government will have power to revise the order if the same is inconsistent with the orders issued by it but not otherwise; and that as the Rules for Licensing and Controlling Theatres and other Places of Public Amusement are not inconsistent with Government orders, Government will have no power to revise the orders passed by the District Magistrate under these Rules R.L.A. is, however, requested to advise whether this view is correct.

2. The question whether Government can rivise the orders of the District Magistrate under the Rules for Licensing and Controlling Theatres and other places of Public Amusement was considered in State of Bombay Vs. F.S.Dubash (Appeal No. 264 of 1951) and it was

held by the High Court that Government did possess the powers of revision. The legal position remains the same even under the Bombay Police Act, 1951. A similar question, was, however, ~~exx~~ canvessed in a Bombay case which went up to the Supreme Court and it was held there, in view of the relavent provisions of the Rules in force in Bombay, that it was not open to Government to cancel the permission granted by the Commissioner of Police and that power to cancel was specifically vested only in the Commissioner. (see Commissioner of Police, Bombay v. Gordhan das, 1952, S.C.R. 135). This decision of the Supreme Court is distinguishable in view of the provisions of sections 46 and 17 and the law as stated by the High Court in State v. Dubash still holds good. In the circumstances, it appears that it would be open to Government to revise the orders of the District Magistrate.

Sd/P.N.LAD.
4/12

Remembrancer of Legal Affairs.

U.R. to H.D. No. 20410 /A dated the 5th December 1952.

VGP. 7-8-53.

LEGAL DEPARTMENT.

There is no legal objection to declaring Inspectors of Police to be the members of the State Service. It is presumed the necessary notification will be issued by Home Department as required by rule 3(c) of the Bombay Civil Service Classification and Recruitment Rules. Now that the power is being taken by Government to appoint Inspectors, any order issued under the old Government of India Act authorising the Commissioner of Police and the Inspector General of Police to appoint Inspectors may be formally cancelled in order to avoid any legal complication

Sd/J.R.DHURANDHAR.
28/11

Additional Secretary to Government.

U.R. to H.D. No. 1320/A-Confl, dated the 28th November 1952.

VoP. 7-8-56.